

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:) Chapter 11
)
CIRCUIT CITY STORES, INC., et al.,) Case No. **08-35653**
)
Debtors.) Jointly Administered

**MOTION OF ARCHOS, INC. FOR RECONSIDERATION OF THE COURT'S
ORDERS ON THE DEBTORS' FORTY-EIGHTH OMNIBUS OBJECTION**

Archos, Inc. ("Archos") hereby files its motion (the "Motion") for reconsideration of this Court's December 3, 2009 and December 18, 2009 Orders relating to the Debtors' Forty-Eighth Omnibus Objection [Docket No. 6125] (the "Orders") as they pertain to Archos' administrative claim, Claim No. 441 (the "Administrative Claim"). In support of its Motion, Archos submits the Declaration of Theresa Cookson, Director of Finance for Archos, attached hereto as Exhibit A; and in further support of the Motion, Archos respectfully states as follows:

JURISDICTION

1. On November 10, 2008 (the "Petition Date"), Circuit City Stores, Inc. ("Debtor") commenced this action in the United States Bankruptcy Court for the Eastern District of Virginia by filing its voluntary petition under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code").

2. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334(a).

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Counsel for Archos, Inc.

3. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(G).
4. Venue is proper before this Court pursuant to 28 U.S.C. § 1408 and 1409.
5. The statutory bases for the relief requested herein are sections 503(b)(9) and 502(j) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) and Rules 2008 and 9024 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

FACTUAL BACKGROUND

6. As of the Petition Date, Archos held claims against the Debtors for goods delivered totaling \$1,120,550.00. Archos also recognized certain credits due to the Debtors totaling \$229,166.21 (the “Receivables”).

7. On November 17, 2008, Archos timely filed a proof of claim in the aggregate amount of \$891,383.79 (the “Aggregate Claim”) on account of all goods sold to the Debtor prior to the Petition Date net of the Receivables. The Aggregate claim was designated as claim number 25 on the claims register.

8. The Aggregate Claim alleged Archos’ entitlement to: (a) an administrative claim under 11 U.S.C. § 503(b)(9) in the amount of \$278,250.00 (the “Administrative Claim”) and (b) a general unsecured claim in the amount of \$613,133.79 (the “Unsecured Claim”), which amount reflects application of a credit to the Debtors for the Receivables.

9. Archos amended the Aggregate Claim by filing two distinct proofs of claim; one for the Administrative Claim (claim number 441) and one for the Unsecured Claim (claim number 239). The amount of the Administrative Claim plus the Unsecured Claim equals the amount of the Aggregate Claim.

10. On June 4, 2009, the Debtors filed the Thirteenth Omnibus Objection to Certain Amended Claims (the “13th Omnibus”). In the 13th Omnibus, the Debtors objected to the Aggregate Claim on the basis that the subsequently filed Unsecured Claim was repetitive. By order entered August 12, 2009, the Court disallowed the Aggregate Claim. The Unsecured Claim and the Administrative Claim survived. The claims register reflects that the Aggregate Claim is expunged and that the present value of the Unsecured Claim is \$613,133.79.

11. By letter dated September 17, 2009, ASM Capital (“ASM”) offered to purchase the Administrative Claim. On September 29, 2009, Archos signed an administrative claim purchase agreement (the “Transfer Agreement”) and returned it to ASM effectuating the transfer of the Administrative Claim to ASM (the “Claim Transfer”).

12. On October 13, 2009, the Debtors filed the Forty-Eighth Omnibus Objection to Certain Administrative Expenses and 503(b)(9) Claims and Motion for (I) Authority to Setoff Against Such Expenses and Claims and (II) a Waiver of the Requirement That the First Hearing on Any Response Proceed as a Status Conference (the “48th Omnibus Objection”). [Docket No. 5211]. The Debtors served notice of the 48th Omnibus Objection to Archos using a tailored notice attached hereto as Exhibit B (the “Archos Notice”).

13. Multiple parties filed responses to the 48th Omnibus Objection. See Notice of Agenda of Matters Scheduled for Hearing November 12, 2009 at 10:00 a.m. (Eastern) [Docket No. 5623] (the “Initial Hearing”).

14. On November 12, 2009, the Court held the initial hearing on the 48th Omnibus Objection and heard argument about the permissibility of the Debtors’ request to set off accounts receivable against administrative claims regardless of whether those receivables were incurred

pre- or post-petition. At the conclusion of the Initial Hearing the Court “ruled in favor” of the Debtors. [Docket No. 5642].

15. On December 3, 2009, the Court entered its order partially sustaining the 48th Omnibus Objection, which permitted Debtors to setoff receivables against administrative claims. [Docket No. 5964] (the “Preliminary Order”). Concurrently the Court issued its memorandum opinion permitting the Debtors to set off accounts receivables against administrative claims, “[s]ubject only to the Respondents’ right to challenge the amount of the Receivables as defined in the Memorandum Opinion and the Debtors’ right to challenge the amount of the Administrative Expenses as defined in the Memorandum Opinion.” (the “Memorandum Opinion”) [Docket No. 5963].

16. On December 16, 2009, ASM filed a transfer of Archos’ Administrative Claim and the administrative claim of another creditor. The claims register reflects that the Claim Transfer was effectuated as of that date. On December 23, 2009, the Clerk’s Office issued its Notice of Transfer of Claim.

17. On December 18, 2009, the Court entered its supplemental order on the 48th Omnibus Objection specifically authorizing the Debtors to exercise their setoff rights in order to offset the Debtors’ receivables against Archos’ Administrative Claim (the “Setoff Order”). [Docket No. 6125].

18. In the Setoff Order, the Court effectuated the setoff requested in the 48th Omnibus Objection against Archos and all other claimants who had not filed responses or appeared at the hearing on the 48th Omnibus Objection. Pursuant to the Setoff Order, the amount of the Administrative Claim in the amount of \$278,250.00 was setoff against the total

receivables alleged by the Debtors' against Archos in the amount of \$343,356.67. As a result, the Administrative Claim was reduced to zero.

19. The Setoff Order reflects that remaining receivables total \$65,106.67. With regard to receivables remaining after setoff, the Setoff Order states: "To the extent any Receivable remains after the offsets contemplated by the Objection are effectuated, the Debtors' rights to obtain payment of any remaining Receivable, or offset the Receivable against other claims filed by the Claimants, are not waived and are expressly reserved." Setoff Order at ¶ 10.

20. On February 23, 2010, the Court entered its third supplemental order on the 48th Omnibus Objection. See Docket No. 6596.

21. Objections regarding other claimants remain unresolved, including claimants subject to the 48th Omnibus Objection, which matters are set for a status hearing on April 15, 2010. See Docket No. 6880.

22. The Debtors' confirmation hearing has been continued until May 11, 2010.

RELIEF REQUESTED

Archos requests reconsideration of the Orders because it contests the amount of the Receivables due to the Debtors.¹

I. A Reclassified Claim May be Reconsidered for Cause

23. Pursuant to Bankruptcy Rule 3008, "[a] party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order." Fed. R. Bankr. P. 2008. Section 502(j)

¹ Archos also disagrees that the Debtors should be permitted to setoff the Receivables against its 503(b)(9) Claim. Recognizing that the Court has already issued an opinion on this issue, Archos is not suggesting that it would re-argue this issue should this Motion be granted. Archos would simply note its objection for the record and reserve its rights to contest the application of Receivables against its 503(b)(9) Claim should the issue be revisited on appeal or otherwise.

permits a disallowed claim to be reconsidered “for cause.”

24. The term “cause” is not defined in section 502(j) and therefore, the application and interpretation of its meaning is “a matter of judicial construction.” See In re Lomas Financial Corp., 212 B.R. 46, 51 (Bankr. D. Del. 1997). In assessing whether cause exists, courts pay particular attention to (1) possible prejudice to the Debtor, (2) the creditor’s explanation for its delay in contesting the claim, and (3) possible prejudice to the creditor absent reconsideration. In re Cassell, 206 B.R. 853, 856 (Bankr. W.D. Va. 1997).

25. In addition, Federal Rule of Civil Procedure 60(b), made applicable to this proceeding by Bankruptcy Rule 9024, provides that “the court may relief a party or its legal representative from a final judgment, order, or proceeding for . . . mistake, inadvertence, surprise, or excusable neglect” or “any other reason that justifies relief. See Fed. R. Civ. P. 60(b); Fed. R. Bankr. P. 9024.

26. When a claim has been disallowed as a result of the claimant’s failure to appear or to produce evidence, the motion is usually decided on whether the claimant is able to show “excusable neglect” as interpreted by the Supreme Court in Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 395 (1993) for its failure to be aware of the existence or significance of the hearing. See In re O.W. Hubbell & Sons, Inc., 180 B.R. 31, 35-36 (N.D.N.Y. 1995).

27. In Pioneer, the United States Supreme Court enumerated the following factors to be considered when addressing a claim of excusable neglect: (1) the danger of prejudice to the non-movant, (2) the length of delay and its potential impact on judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the movant, (4)

whether the movant acted in good faith. Id. Furthermore, the Supreme Court concluded that the process of determining which types of neglect are excusable, “is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission,” Id. at 395. In this matter, the factors strongly support reconsideration of the Orders.

A. Cause Exists to Reconsider the Orders.

28. Archos disputes the Debtors' assertion in the 48th Omnibus that they are owed Receivables of \$343,356.67. The correct amount of Receivables is only \$229,166.21 and Archos has already given the Debtors credit for that amount. See Affidavit ¶ 14. Specifically, in computing its claims, Archos subtracted Receivables of \$229,166.21 from its total claims of \$1,120,550.00. See Affidavit ¶ 3. Archos then filed its Aggregate Claim in the amount of \$891,383.79, net of Receivables owed to the Debtors. See Affidavit ¶ 4.

29. In the 48th Omnibus, the Debtors sought authority to setoff Receivables of \$343,356.67 against Archos' 503(b)(9) Claim, despite the fact that they had already credit for Receivables totalling \$229,166.21.

30. In other words, assuming for the sake of argument that the Debtors are correct in their calculation of the Receivables, and taking into consideration this Court’s decision that the Receivables may be set off against the Administrative Claim, Archos would have a surviving Unsecured Claim of \$842,300.00. As a result, the Orders were based on evidence that was inaccurate not only with respect to the amount of the Receivables owed by Archos, but also with regard to the amount of Receivables the Debtors had already received from Archos, which were not disclosed in the 48th Omnibus.

31. As such, cause exists to reconsider the amount of the Receivables so that the

Debtors will not be permitted to double dip by setting off the inflated amount of \$343,356.67 on top of the amount of \$229,166.21 of Receivables for which they have already received credit, and of which the Court was unaware when it entered its Orders.

B. The Debtors will not be prejudiced if this motion is granted.

32. Reconsideration of the Orders will not prejudice the Debtors because no distributions have been made in the case and because the amount of the Administrative Claim will not affect the feasibility of the Debtor's proposed Chapter 11 plan (the "Plan"). The earliest the Debtors will confirm their plan is May 11, 2010. See Docket No. 6736.

33. Moreover, the Preliminary Order did not make any determination as to the liquidated amounts of the "Receivables" or the "Administrative Expenses" (as those terms are defined in the Memorandum Opinion) with respect to those parties that filed responses to the 48th Omnibus Objection. Indeed, a review of the Court's docket reveals that the Debtors are still working with respondents to resolve several pending objections to claims and that the Debtors have routinely continued other claim objections for many months. At this time, the Debtors are still addressing several different omnibus claims objections, including claims subject to the 48th Omnibus, which have been continued until March 18, 2010 and March 25, 2010. [Docket Nos. 6636 and 5743].

34. Under these circumstances, reinstatement of the Administrative Claim to address the amount of the Debtors' receivables on the merits will not cause prejudicial delay. The Debtors have invested little time in obtaining setoff of the alleged receivables against the Administrative Claim. If permitted to respond in substance to the claim objections, Archos will

receive no advantage as a result of delay; nor will the Debtor be prejudiced by such delay.²

C. Reconsideration will have no adverse impact upon judicial proceedings.

35. Little time has elapsed since entry of the Orders, and no subsequent orders have been entered that would otherwise affect the relief requested herein. Additionally, other creditors have filed responses to the 48th Omnibus, which remain pending, and, on information and belief, unresolved. Because the Debtors have not resolved all of their administrative claims objections, no prejudice will exist by adding this one claim to the list of claims that must be unresolved.

D. The delay was due to Archos' factual circumstances that led Archos to believe it did not need to file a response.

36. This dilemma results from an unfortunate sequence of events that began with the Transfer Agreement on September 29, 2009, pursuant to which Archos transferred its Administrative Claim to ASM. As of that date, Archos believed that: (a) the Administrative Claim remained in good standing and not subject to any right of the Debtor to setoff against it; and (b) pursuant to the Transfer Agreement, ASM now owned the Administrative Claim and any objection concerning that claim would be directed to ASM.

37. Fourteen days later the Debtors filed the 48th Omnibus Objection at a time when Archos did not believe it held an administrative claim against the Debtors against which the Debtors could setoff receivables. Only once it became clear that to ASM (and then Archos) that the Administrative Claim had been wiped out by the Setoff Order did ASM and Archos realize that action was necessary.

² Archos has already begun working with the Debtors to resolve the discrepancy between Archos' calculation and the Debtors' calculation of the Receivables owed to the Debtors.

E. Archos has acted in good faith at all times.

38. Archos has acted in good faith at all times by timely filing its proofs of claim, in which it already given Debtors credit for the Receivables. Upon learning that the Debtors' alleged receivable amount had been setoff against its Administrative Claim, Archos promptly took steps to consult with counsel and file this motion seeking relief. Moreover, Archos is confident that, if given the opportunity to address the merits of the Administrative Claim, the Court would determine that the proper amount of the Receivables is \$229,166.21, not the \$343,356.67 alleged by the Debtors. As such, after setting off Receivables in the amount of \$229,166.21, Archos should retain an Administrative Claim in the amount of \$49,084.

II. Reconsideration is Also Appropriate Because the Debtors Obtained Relief Without Proper Notice

39. Although the notice of the 48th Omnibus Objection stated that the Administrative Claim may be reduced upon failure to respond, it said nothing to suggest that the Debtors may seek to recover receivables in excess of the amount of the Administrative Claim.

40. The Supreme Court has recognized that "an elemental and fundamental requirement of due process in any proceeding which is to be accorded finality is notice, reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. . ." Mulane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 94 L. Ed. 865 (1950).

41. The Debtors' notice served in connection with the 48th Omnibus (the "Notice") advised that the Debtors sought to "setoff certain administrative and/or 503(b)(9) claims to the extent of the amount of Receivables (as defined in the Objection)." The Notice also included a chart demonstrating that the Debtors sought to reduce Archos' 503(b)(9) Claim from

\$278,250.00 to \$0. However, the Notice did not advise that, in addition to reducing Archos' 503(b)(9) Claim to zero via setoff, the Debtors would then seek to recover approximately \$65,000 from Archos on account of receivables that allegedly exceed the 503(b)(9) Claim. In fact, the Notice reserved the right of the Debtors to assert counterclaims in the future.

CONCLUSION

For the foregoing reasons, Archos has met the standards for relief based on excusable neglect. Archos respectfully submits that reconsideration of the Orders with respect to claim 441 is warranted under Section 502(j) of the Bankruptcy Code and Bankruptcy Rules 3008 and 9024.

NOTICE

Pursuant to Local Bankruptcy Rule 9014-1(B), Archos requests that the Preliminary Hearing and Final Hearing on this matter be consolidated and heard on the scheduled Omnibus Hearing Date of April 29, 2010 at 2:00 p.m.

Pursuant to Local Bankruptcy Rule 4001(a)-1(F), notice of this Motion will be served upon (a) counsel for the Debtor, (b) the United States Trustee, and (c) counsel for the Official Committee of Unsecured Creditors.

NO PRIOR REQUEST

No previous application for the relief requested herein has been made by Archos to this or any other Court.

WAIVER OF MEMORANDUM OF LAW

Archos respectfully requests that the Court treat this Motion as a written memorandum of points and authorities and waive any requirement that this Motion be accompanied by a written

memorandum of points and authorities as required by Local Bankruptcy Rule 9013-1(G).

Archos reserves the right to file a brief in reply to any objection to this Motion.

WHEREFORE, for the foregoing reasons and for cause shown, Archos respectfully requests that the Court enter the proposed Order attached hereto as Exhibit C granting (i) Archos' request for reconsideration of the Orders and (ii) such other relief as this Court deems just and proper.

Dated: April 2, 2010

Respectfully submitted,

/s/ Troy Savenko

Troy Savenko (Va. Bar No. 44516)
Leslie A. Skiba (Va. Bar No. 48783)
GREGORY KAPLAN, PLC
7 East Second Street (23224-4253)
Post Office Box 2470
Richmond, VA 23218-2470
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Facsimile: (804) 230-0024

Counsel to Archos, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2010, a copy of the foregoing Motion of Archos, Inc. for Reconsideration of the Court's Orders on the Debtors' Forty-Eighth Omnibus Objection was filed and served via the Court's Electronic Case Filing System on all parties receiving such notice, including the following (also served by separate e-mail): (a) counsel for the Debtor (circuitcityservice@mcguirewoods.com and project.circuitcity@skadden.com); (b) the United States Trustee (Robert.B.Van.Arsdale@usdoj.gov); and (c) counsel for the Official Committee of Unsecured Creditors (jpomerantz@pszjlaw.com, rfeinstein@pszjlaw.com, ltavanner@tb-lawfirm.com, and pberan@tb-lawfirm.com).

/s/ Troy Savenko

Counsel

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:) Chapter 11
)
CIRCUIT CITY STORES, INC., et al.,) Case No. **08-35653**
)
Debtors.) Jointly Administered

DECLARATION OF THERESA COOKSON

I, Theresa Cookson, hereby declare as follows:

1. I am employed as Director of Finance of Archos, Inc. ("Archos").
2. Prior to the commencement of the above-referenced bankruptcy case, Archos sold goods on credit to the Debtors in the ordinary course of the Debtors' business.
3. As of the Petition Date¹, Archos held claims against the Debtors for goods delivered totaling \$1,120,550.00. Archos also recognized receivables due to the Debtors totaling \$229,166.21 (the "Receivables").
4. On November 17, 2008, Archos timely filed a proof of claim in the aggregate amount of \$891,383.79 (the "Aggregate Claim") on account of all goods sold to the Debtor prior to the Petition Date net of the Receivables.
5. The Aggregate Claim alleged Archos' entitlement to: (a) an administrative claim under 11 U.S.C. § 503(b)(9) in the amount of \$278,250.00 (the "Administrative Claim") and (b)

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion of Archos, Inc. for Reconsideration of the Court's December 18, 2009 Order on the Debtors' Forty-Eighth Omnibus Objection for Purposes of Vacating the Determination of the Amount of the Debtors' Receivables Setoff Against Archos, Inc.'s Administrative Claim.

a general unsecured claim in the amount of \$613,133.79 (the “Unsecured Claim”), which amount reflects application of a credit to the Debtors for the Receivables.

6. Archos amended the Aggregate Claim by filing two distinct proofs of claim; one for the Administrative Claim (claim number 441) and one for the Unsecured Claim (claim number 239). The amount of the Administrative Claim plus the Unsecured Claim equals the amount of the Aggregate Claim.

7. By letter dated September 17, 2009, ASM Capital (“ASM”) offered to purchase the Administrative Claim. On September 29, 2009, Archos signed an administrative claim purchase agreement (the “Transfer Agreement”) and returned it to ASM effectuating the transfer of the Administrative Claim to ASM (the “Claim Transfer”).

8. On December 16, 2009, ASM filed a transfer of Archos’ Administrative Claim and the administrative claim of another creditor. The claims register reflects that the Claim Transfer was effectuated as of that date. On December 23, 2009, the Clerk’s Office issued its Notice of Transfer of Claim.

9. Archos was listed as the notice party on Archos’ 503(b)(9) proof of claim. Through inadvertence, I did not realize that Archos needed to respond to the 48th Omnibus because the 503(b)(9) Claim had previously been assigned to ASM. Moreover, I did not realize that the Debtors sought to recover receivables in excess of the 503(b)(9) Claim from Archos pursuant to the 48th Omnibus. As a result, Archos did not immediately take any action to respond to the 48th Omnibus.

10. Recently it came to my attention that the Debtors had effectuated a setoff against the 503(b)(9) Claim which reduced the 503(b)(9) Claim to zero. I immediately requested

Archos' outside counsel to obtain local counsel for Archos in this case to prosecute the 503(b)(9) Claim.

11. The correct amount of Receivables due to the Debtors is \$229,166.21, rather than \$343,356.67 as alleged by the Debtors. I gave the Debtors credit for \$229,166.21 in the Aggregate Claim and the Unsecured Claim.

12. Pursuant to Section 1746 of Title 28 of the United States Code, I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 2, 2010

/s/ Theresa Cookson

Name: Theresa Cookson

Title: Director of Finance

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Counsel to the Debtors and
 Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 RICHMOND DIVISION

- - - - - x
 In re: : Chapter 11
 :
 CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)
 et al., :
 :
 Debtors. : Jointly Administered
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**NOTICE OF DEBTORS' FORTY-EIGHTH OMNIBUS OBJECTION TO CERTAIN
 ADMINISTRATIVE EXPENSES AND 503(b)(9) CLAIMS AND MOTION FOR (I)
 AUTHORITY TO SETOFF AGAINST SUCH EXPENSES AND CLAIMS AND (II) A
 WAIVER OF THE REQUIREMENT THAT THE FIRST HEARING ON ANY RESPONSE
 PROCEED AS A STATUS CONFERENCE**

PLEASE TAKE NOTICE THAT the above-captioned Debtors (the "Debtors") filed the Forty-Eighth Omnibus Objection to Certain Administrative Expenses and 503(b)(9) Claims and Motion for (I) Authority to Setoff Against Such Expenses and Claims and (II) a Waiver of the Requirement that the First Hearing on Any Response Proceed as a Status Conference (the "Objection") with the Bankruptcy Court. A copy of the Objection is attached to this notice (this "Notice") as Exhibit 1. By the Objection, the Debtors are seeking to setoff certain administrative and/or 503(b)(9) claims to the extent of the amount of Receivables (as defined in the Objection).

PLEASE TAKE FURTHER NOTICE THAT on April 1, 2009, the Bankruptcy Court entered the Order Establishing Omnibus Objection Procedures and Approving the Form and Manner of the Notice of Omnibus Objections (Docket No. 2881) (the "Order"), by which the Bankruptcy Court approved procedures for filing omnibus objections to proofs of claim and requests for allowance and payment of administrative expenses and/or cure claims (collectively, the "Claims") in connection with the above-captioned chapter 11 cases (the "Omnibus Objection Procedures").

Specifically, the Objection seeks to setoff certain claims, including your claim(s), listed below, all as set forth in the Objection.

<u>TO</u>	<u>Claim Number</u>	<u>Amount Claimed as Filed</u>	<u>Amount of Claim as Modified</u>
ARCHOS INC 7951 E MAPPLEWOOD AVE STE 260 GREENWOOD VILLAGE, CO 80111	441	\$278,250.00	\$0.00

YOU ARE RECEIVING THIS NOTICE BECAUSE THE PROOF(S) OF CLAIM LISTED HEREIN THAT YOU FILED AGAINST ONE OR MORE OF THE DEBTORS IN THE ABOVE-CAPTIONED CHAPTER 11 CASES ARE SUBJECT TO THE OBJECTION. YOUR RIGHTS MAY BE AFFECTED BY THE OBJECTION. THEREFORE, YOU SHOULD READ THIS NOTICE (INCLUDING THE OBJECTION AND OTHER ATTACHMENTS) CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY. IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY WISH TO CONSULT ONE.

MOREOVER, PURSUANT TO RULE 3007-1 OF THE LOCAL RULES OF THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF VIRGINIA AND THE OMNIBUS OBJECTION PROCEDURES, UNLESS A WRITTEN RESPONSE AND A REQUEST FOR A HEARING ARE FILED WITH THE CLERK OF THE COURT AND SERVED ON THE OBJECTING PARTY BY 4:00 P.M. (EASTERN) ON NOVEMBER 4, 2009, THE COURT MAY DEEM ANY OPPOSITION WAIVED, TREAT THE OBJECTION AS CONCEDED AND ENTER AN ORDER GRANTING THE RELIEF REQUESTED WITHOUT A HEARING.

Critical Information for Claimants
Choosing to File a Response to the Objection

Who Needs to File a Response: If you oppose the relief requested in the Objection and if you are unable to resolve the Objection with the Debtors before the deadline to respond, then you must file and serve a written response (the "Response") to the Objection in accordance with this Notice.

If you do not oppose the relief requested in the Objection, then you do not need to file a written Response to the Objection and you do not need to appear at the hearing.

Response Deadline: The Response Deadline is **4:00 p.m. (Eastern Time) on November 4, 2009 (the "Response Deadline")**.

THE BANKRUPTCY COURT WILL ONLY CONSIDER YOUR RESPONSE IF YOUR RESPONSE IS FILED, SERVED AND RECEIVED BY THE RESPONSE DEADLINE.

Your Response will be deemed timely filed only if the Response is **actually received** on or before the Response Deadline by the Bankruptcy Court at the following address:

Clerk of the Bankruptcy Court
United States Bankruptcy Court
701 East Broad Street - Room 4000
Richmond, Virginia 23219

Your Response will be deemed timely served only if a copy of the Response is actually received on or before the Response Deadline by the Debtors' attorneys:

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM, LLP
One Rodney Square
PO Box 636
Wilmington, DE 19899-0636
Attn: Gregg M. Galardi
Attn: Ian S. Fredericks

MCGUIREWOODS LLP
One James Center
901 E. Cary Street
Richmond, VA 23219
Attn: Dion W. Hayes
Attn: Douglas M. Foley

- and -

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM, LLP
155 North Wacker Drive
Chicago, Illinois 60606

Attn: Chris L. Dickerson

The hearing on the Objection will be held at **10:00 a.m. (Eastern) on November 12, 2009 at:**

United States Bankruptcy Court
701 East Broad Street - Courtroom 5100
Richmond, Virginia 23219

If you file a timely Response, you need to appear at the hearing on the Objection, **which is scheduled for November 12, 2009 at 10:00 a.m. (Eastern)**, if you want the Court to consider your views on the Objection. In the Objection, the Debtors request that the Court hear legal argument on and resolve the legal issues presented by the Objection at the November 12, 2009 hearing. After the Court rules on the legal issues presented in the Objection, and to the extent any facts are in dispute, the Debtors and any responding Claimant may thereafter engage in discovery and schedule an evidentiary hearing, if necessary.

Procedures for Filing a Timely Response and Information Regarding the Hearing on the Objection

Contents. To facilitate a speedy and non-judicial resolution of a Claim subject to the Objection, any claimant filing a Response shall use its best efforts to include the following (at a minimum) in its filed Response, to the extent such materials are not attached to its proof of claim:

- a. a caption setting forth the name of the Bankruptcy Court, the name of the Debtors, the case number and the title of the Objection to which the Response is directed;
- b. the claimant's name and an explanation for the amount of the Claim;
- c. a concise statement, executed by (or identifying by name, address and telephone number) a person with personal knowledge of the relevant facts that support the Response, setting forth the reasons why the Bankruptcy Court should overrule the Objection as to the claimant's claim, including, without limitation (to the extent not set forth in its proof of claim), the specific factual and legal bases upon which the claimant intends to rely in support of its Response and its underlying Claim;

- d. a copy of or identification of any other documentation or other evidence of the Claim, to the extent not already included with the Claim that the claimant presently intends to introduce into evidence in support of its Claim at the hearing; provided, however, that for a Response filed in support of a Claim arising out of a lease of real property, the Response need not attach such lease if the claimant indicates its willingness to provide such documentation upon request;
- e. a declaration of a person with personal knowledge of the relevant facts that support the Response; and
- f. the claimant's address, telephone number and facsimile number and/or the name, address, telephone number and facsimile number of the claimant's attorney and/or designated representative to whom the attorneys for the Debtors should serve a reply to the Response, if any (collectively, the "Notice Address"). If a Response contains Notice Address that is different from the name and/or address listed on the Claim, the Notice Address will control and will become the service address for future service of papers with respect to all of the claimant's Claims listed in the Objection (including all Claims to be setoff) and only for those Claims in the Objection.
- g. To the extent such person differs from the person identified pursuant to subsection e, above, the name, address, telephone number, facsimile number, and electronic mail address of the representative of the claimant (which representative may be the claimant's counsel) party with authority to reconcile, settle or otherwise resolve the Objection on the claimant's behalf (collectively, the "Additional Addresses"). Unless the Additional Addresses are the same as the Notice Addresses, the Additional Address will not become the service address for future service of papers.

Additional Information. To facilitate a resolution of the Objection, your Response should also include the name, address,

telephone number and facsimile number of the party with authority to reconcile, settle or otherwise resolve the Objection on the claimant's behalf. Unless the Additional Addresses are the same as the Notice Addresses, the Additional Addresses will not become the service address for future service of papers.

Failure to File Your Timely Response. If you fail to file and serve your Response on or before the Response Deadline in compliance with the procedures set forth in this Notice, the Debtors will present to the Bankruptcy Court an appropriate order granting the relief requested in the Objection without further notice to you.

Each Objection Is a Contested Matter. Each Claim subject to the Objection and the Response thereto shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014, and any order entered by the Bankruptcy Court will be deemed a separate order with respect to such claim.

Additional Information

Requests for Information. You may also obtain a copy of the Objection or related documents on the internet, by accessing the website of the Debtors at www.kccllc.net/circuitcity.

Reservation of Rights. Nothing in this Notice or the Objection constitutes a waiver of the Debtors' right to assert any claims, counterclaims, rights of offset or recoupment, preference actions, fraudulent-transfer actions or any other claims against you by the Debtors. Unless the Bankruptcy Court allows your Claims or specifically orders otherwise, the Debtors have the right to object on any grounds to the Claims (or to any other Claims or causes of action you may have filed or that have been scheduled by the Debtors) at a later date on any grounds or bases. In such event, you will receive a separate notice of any such objections.

Dated: October 13, 2009
Richmond, Virginia

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Counsel for Debtors and Debtors
in Possession

SVC: 3
PACK No: 11
OMNI 48 CLAIMANTS

CASE No: 08-35653
PRF No: 20792

ARCHOS INC
7951 E MAPPLEWOOD AVE STE 260
GREENWOOD VILLAGE, CO 80111

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:)	Chapter 11
)	
CIRCUIT CITY STORES, INC., <u>et al.</u> ,)	Case No. 08-35653
)	
Debtors.)	Jointly Administered

ORDER GRANTING MOTION FOR RECONSIDERATION

This matter comes before the Court on the Motion of Archos, Inc. for Reconsideration of the Court's Orders on the Debtors' Forty-Eighth Omnibus Objection (the "Motion") [Docket No. ____]. The Court, having reviewed the Motion and all pleadings relating thereto and having heard the statements of counsel regarding the relief requested in the Motion at a Hearing before the Court (the "Hearing"), finds that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S. C. § 157(b)(2); (c) notice of the Motion and the Hearing (and the proposed Order) was sufficient; and (d) reconsideration of the 48th Omnibus Objection as it relates to Archos is appropriate under the circumstances. Having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause of the relief granted herein;

IT IS HEREBY ORDERED:

1. The Motion is GRANTED.
2. All capitalized terms not otherwise defined herein shall have the meaning given to them in the Motion.

Troy Savenko (Va. Bar No. 44516)
Leslie A. Skiba (Va. Bar No. 48783)
GREGORY KAPLAN, PLC
7 East Second Street (23224-4253)
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Counsel for Archos, Inc.

3. The Court will hold a hearing on [DATE] to reconsider its December 3, 2009 Order and December 18, 2009 Order on the Debtors' Forty-Eighth Omnibus Objection as such orders relate to Archos, Inc.

ENTERED:

UNITED STATES BANKRUPTCY JUDGE

I ASK FOR THIS:

Troy Savenko (Va. Bar No. 44516)
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Counsel to Archos, Inc.

LOCAL RULE 9022-1 CERTIFICATION

In accordance with Local Rule 9022-1, I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Troy Savenko
Troy Savenko

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